

IN THE UNITED STATES DISTRICT COURT FOR THE  
MIDDLE DISTRICT OF ALABAMA

VIZIONWORKS, LLC, a limited liability company, \*  
\*  
\*  
Plaintiff, \*  
\*  
\* v. \* CASE NO. 2:07-cv-96-MEF  
\*  
DOYCE W. ELLENBURG, an individual; \*  
SHIRLEY F. ELLENBURG, an \*  
Individual; SUMMIT REALTY \*  
SOUTHEAST, LLC, a corporation, \*  
\*  
\* Defendants. \*

**DEFENDANTS DOYCE W. ELLENBURG AND SHIRLEY F. ELLENBURG'S MOTION  
FOR CHANGE OF VENUE**

COME NOW the Defendants Doyce W. Ellenburg and Shirley F. Ellenburg, by and through counsel, pursuant to 28 U.S.C. § 1404, and file this Motion for Change of Venue from the United States District Court for the Middle District of Alabama to the United States District Court for the Southern District of Alabama. In support of this Motion, the Defendants state as follows:

1. Pursuant to 28 U.S.C. § 1404, the Middle District Court of Alabama has discretion to transfer this action to the Southern District of Alabama based on the convenience or the parties and witnesses to the action.
2. The Southern District of Alabama is a proper venue in this case based upon diversity of citizenship because Defendants Doyce W. Ellenburg and Shirley F. Ellenburg are residents of Baldwin County, Alabama, which is in the Southern District of Alabama. 28 U.S.C. 1331(a).

3. The property which is the subject matter of the lawsuit is located in Baldwin County, Alabama, and the Southern District of Alabama.

4. The vast majority of the parties and witnesses to this action are located in Baldwin County, Alabama, which is in the Southern District of Alabama.

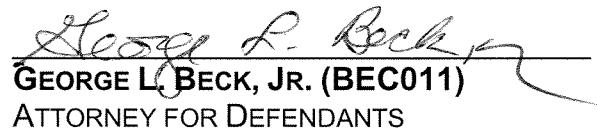
5. Issues requiring the testimony and records of the Baldwin County Commission; the City of Gulf Shores; Listing Broker C.B. Brierty of Gulf Shores, Alabama; the Selling Broker Coldwell Banker South Shore Realty of Gulf Shores, Alabama, as well as these individual defendants are located in Baldwin County, Alabama, and within the Southern District of Alabama.

6. At best, the Defendant Summit Realty Southeast, LLC is a mere innocent stakeholder whose testimony nor records are necessary for adjudication on the merits.

7. This Motion for Change of Venue is based on all pleadings, the attached affidavit of Defendant Doyce W. Ellenburg (Exhibit A), and the Defendants' memorandum brief.

WHEREFORE, Defendants Doyce W. Ellenburg and Shirley F. Ellenburg respectfully request this Court to grant this Motion to Change Venue in the interest of justice and on the grounds that the Southern District of Alabama is the most convenient venue for the parties and witnesses involved.

Respectfully submitted this the 5th day of March, 2007.

  
GEORGE L. BECK, JR. (BEC011)  
ATTORNEY FOR DEFENDANTS

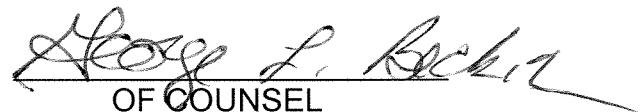
**OF COUNSEL:**

CAPELL & HOWARD, P.C.  
Post Office Box 2069  
150 South Perry Street 36104  
Montgomery, AL 36102-2069  
Telephone: (334) 241-8000  
Facsimile: (334) 323-8888

**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the foregoing document on the following counsel of record by placing a copy in the United States mail, postage prepaid and properly addressed to them on this 5th day of March, 2007.

L. Graves Stiff, III  
W. Drake Blackmon  
STARNES & ATCHISON  
P.O. Box 598512  
Birmingham, AL 35259-8512

  
OF COUNSEL

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA**

**VIZIONWORKS,** )  
                        )  
**Plaintiff,**       )  
                        )  
**v.**                   )     **CASE NO.: 2:07-cv-96-MEF**  
                        )  
**DOYCE W. ELLENBURG, et al.**   )  
                        )  
**Defendants.**       )

**AFFIDAVIT OF DOYCE W. ELLENBURG**

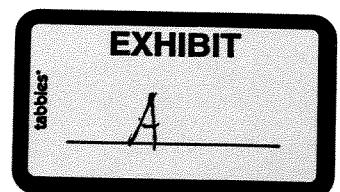
**STATE OF ALABAMA**

**COUNTY OF BALDWIN**

Before me, the undersigned Notary Public in and for said county and state, personally appeared **Doyce W. Ellenburg**, who, being first duly sworn on oath, doth depose and says as follows:

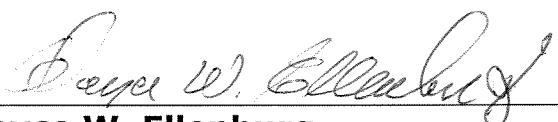
1. My name is **Doyce W. Ellenburg**. I am over the age of twenty-one (21) years, and I am a resident citizen of Baldwin County, Alabama. I am named as Defendant in the above-styled lawsuit.

2. The land which is the subject matter of this Complaint is located in Baldwin County, Alabama. The contract for the sale of the property made the subject matter of the Complaint was executed in Baldwin County, Alabama. All negotiations leading up to the execution of said contract were conducted in Baldwin County, Alabama.



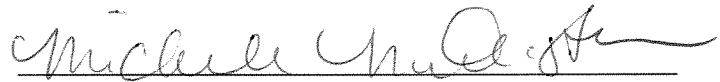
3. All transactions in Alabama that involved execution of the contract occurred in Baldwin County. The realty company for the Purchaser (Plaintiff) was Coldwell Banker (South Shore) at Baldwin County, Alabama. The realtor for me was C.B. Brierty, located at Gulf Shores, Alabama. The meetings occurred in the attorney's office in Foley, Alabama, and the realtor's office in Gulf Shores, Alabama. Witnesses include realtors for Buyers and Sellers and the attorney for the Sellers, all of which are located in Baldwin County, Alabama. Issues of access, wetlands and zoning will involve documents and officials from the City of Gulf Shores and Baldwin County. An engineer and his records who worked on development plans for the Plaintiff are located in Baldwin County, Alabama. Thus, because of numerous witnesses and records, it is much more convenient to try this case in the Southern District of Alabama.

Further, Affiant saith not.



**Doyce W. Ellenburg**

**SWORN TO AND SUBSCRIBED** before me on this the 26<sup>th</sup> day of February, 2007.



**Notary Public**  
**Commission Expires:** July 29, 2009